

Office of Water
Freedom of Information Act (FOIA)
Standard Operating Procedures

PURPOSE:

This Standard Operating Procedure (SOP) establishes uniform guidance and procedures for the Office of Water staff in the processing of Freedom of Information Act (FOIA) requests using the FOIAonline system.

APPLICABILITY:

This SOP applies to employees of the Office of Water's Immediate Office, Office of Ground Water and Drinking Water, Office of Science and Technology, Office of Wastewater Management and the Office of Wetlands, Oceans and Watersheds.

AUTHORITY:

Freedom of Information Act, 5 U.S.C. Section 552.

EPA's FOIA Regulations, Title 40, C.F.R. Part 2, Subpart A.

CIO Policy 2157.0. Freedom of Information Act (FOIA) Policy

OBJECTIVE:

These procedures provide basic instructions for responding to Freedom of Information Act (FOIA) requests submitted to the EPA. They address statutory, regulatory, policy, procedural and processing requirements to be followed by Office of Water employees.

PROCEDURES:

1. The public submits FOIA requests to the Agency via FOIAonline, postal mail, facsimile or hand delivered. The Agency's HQ FOIA Office (within the Office of Environmental Information) receives, reviews and will acknowledge incoming information requests. This will include determining if the request is in the appropriate FOIA office for review. It is responsibility of the HQ FOIA Office to determine the "fee category" for which the requesters are accordingly charged processing fees based on specific categories (e.g., Commercial Use, Educational Institution or Non-Commercial Scientific Institution, Media and Other). The HQ FOIA Office will also process requests for Fee Waivers and Expedited Processing which must be requested in the initial FOIA request. Decisions on Fee Waivers or Expedited Processing Requests submitted to the EPA Regions or to EPA HQ will be made by the EPA National FOIA Officer according to factors outlined in 40 CFR Section 107(l)(5) and 2.104(e) respectively. The HQ FOIA Office will assign the request in FOIAonline to the primary FOIA Coordinator in the Program or Regional Office believed to most likely house the majority of responsive records.

2. The Office of Water's FOIA Coordinator is located in the Immediate Office of the Assistant Administrator on the Management and Operations Staff. The OW FOIA Coordinator and her back-up receives the FOIA assignment via FOIAonline. The request is reviewed and assigned to the appropriate OW program office. (If the requester asked for a fee waiver, an email is received by the OW FOIA Coordinator from HQ FOIA Office requesting input on whether or not the FOIA request is billable (processing fees). The OW FOIA Coordinator forwards this email to the

OW program office that received the assignment stating that the FOIA Office will need input as to whether or not the request is billable (processing fees), and provide any other information that would be relevant to HQ FOIA Office during the fee waiver determination process. OW's response to the FOIA Office inquiry is typically due within 48 hours of receipt. The OW program office email response regarding the Fee Waiver is sent to both the OW FOIA Coordinator and the FOIA Specialist in HQ FOIA Office.

3. The FOIA Contact in the assigned OW program office receives and reviews the FOIA request to determine which of their Divisions would be the appropriate action office. The FOIA Contact also forwards the assignment and the email from HQ FOIA regarding the fee waiver request to the appropriate Division and ensures their program's timely response.

4. The Division's FOIA contact receives the FOIA request and in cooperation with the Division's management, ensures the FOIA is in the right office and makes the assignment to the appropriate staff member (subject matter expert). The Division FOIA contact will work with the staff member to respond to the HQ FOIA request as to whether or not the FOIA is billable.

5. The staff person that receives the FOIA assignment reviews the incoming request to determine:

- a. **Search Parameters** (cut-off date for records)
- b. **Obtains Clarification**, if needed, and/or discusses narrowing the scope of the request if overly broad (OGC program attorney can be involved at this level for complex requests).
- c. **Determine if Additional Responsive Records are in Other EPA Organizations** (contributing offices) and will make task assignment(s) via FOIAonline as appropriate.
- d. **Estimated Processing Fees** – estimates billable costs to process FOIA request and sends email response to HQ FOIA Specialist and OW FOIA Coordinator stating whether or not the FOIA is billable. If processing fees exceed \$25.00 or an amount specified by the requester, an assurance of payment is required before processing begins unless a fee waiver has been granted by the Agency FOIA Officer.
- e. **Determine Response Time** – statute allows 20 days to respond. If an unusual circumstance exists, then an additional 10 working days is allowed. A letter to the requester stating the unusual circumstance and the new due date must occur within the initial 20 days. If unusual circumstances do not exist or the due date has already been extended and additional time is needed to complete the response, a staff person will contact the requester to get an agreed upon new due date. The requester can modify the request which may reduce the time needed to process the request. If the requester does not agree, the EPA FOIA Public Liaison can assist in resolution of any dispute.

f. **Collection and Review of Records** – the Action Office and Contributing Office are responsible for identifying, collecting and reviewing records within the scope of the request. This includes the responsibility for consultation and referral with other federal agencies. Contributing Offices are also responsible for coordinating responsive activities with the Action Office (i.e., the office that is determined to have the majority of responsive records) when more than one office has responsive records. The Action Office and each Contributing Office should also assure that protected information has been redacted from records before they are released. The Action and Contributing Offices will (1) ensure that redacted information cannot be read through photocopied records; (2) remove “hidden” metadata as appropriate (e.g. Microsoft Word document properties; and (3) annotate records with the applicable FOIA exemption(s) at the location of the redacted information. A copy of both the original and redacted record will be stored in FOIAonline, unless subject to special handling requirements (e.g. large volume) or policies. Exceptions to this storage requirement are approved on a case-by-case basis by the Agency FOIA Officer. FOIAonline allows FOIA professionals to put records in the system that are not released to the public. This protects records that have been withheld. If records provided in response to a request are not entered into FOIAonline because of special handling requirements or policies, or because the volume of files make it impractical to upload the complete response, a placeholder document must be uploaded with contact information for how to obtain a copy of the response that the responding office will maintain and make readily available.

NOTE: Only records that have been (1) marked published and (2) approved for release are available to the public in FOIAonline.

g. **Determine Which Records (or portions) May be Released** – After thorough review, the Action Office will prepare to release responsive, non-exempt records or portions of records released. All records released or withheld in total in response to a FOIA request must be reviewed by at least two knowledgeable individuals, including one manager or supervisor to ensure openness, transparency, consistency, and the appropriate application of FOIA exemptions. One of the reviews may be performed by the individual who processes the request. The Action Office may consult with Agency FOIA Officer or Office of General Counsel (OGC) for questions regarding withholding of records under a FOIA exemption. Action Offices should only withhold records, or portions of records, when they reasonably foresee that disclosure would harm an interest protected by one of the exemptions or when disclosure is prohibited by law.

Responsive records that have been properly reviewed and redacted (if necessary) will be subject to one of the following outcomes:

- (1) Release in Full: The record, in its entirety, may be released to the requester.
- (2) Partial Grant/Partial Denial: Portions of the record will be withheld from the requester if covered by either one or multiple FOIA exemptions. The portions of the record that are not redacted are released to the requester.

- (3) Withhold in Full: The record, in its entirety, will be withheld from the requester if covered by either one or multiple FOIA exemptions.
- (4) No Record: If, after a reasonable search likely to uncover all responsive documents, no records are located that are responsive to the request, the requester will be informed in writing. A no records certification form must be completed for no record responses and entered in FOIAonline. Please note: This form is **not** sent to the requester.
- (5) Confidential Business Information (CBI): For records or parts of records that have been claimed as CBI or would be claimed as CBI if the business knew the EPA proposed to disclose the information, the procedures set out in 40 CFR. Section 2.204 must be followed.
- (6) Glomar Response: In some instances, the EPA may expressly refuse to confirm or deny the existence of records responsive to a FOIA request; this is call a Glomar response. The response letter will inform the requester that the request is denied because “either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of FOIA.” The Action Office must obtain approval from OGC prior to issuing a Glomar response.

h. Preparation of Response Letter – The Action Office will prepare the response letter using standard language, if suitable, and obtain necessary concurrences. All response letters must include (1) the FOIA tracking number and (2) appeal language as appropriate. FOIA requesters have the right to appeal initial FOIA decisions made by the EPA if:

- No records were found;
- The response time has exceeded the statutory authority or documented extensions;
- The request for expedited processing was denied;
- The request for a fee waiver was denied;
- The requester believes some records or portions of records were improperly withheld;
- The requester believes the search was inadequate; or
- The requester believes the fee category in which they were placed is incorrect.

In addition, response letters that withhold Agency records, in total or in part, are required to identify the:

- Records withheld individually or by category of similar documents if voluminous;
- Applicable FOIA exemption(s) under which the record is being withheld and a brief statement explaining the reason for the denial; and
- Authorizing official by name and title (Division Director or equivalent or higher level).

- i. **Finalize Processing Fees** – The Action Office will inform the requester in the letter if fees for processing the request are not billable (i.e., equal to or less than \$14.00). If the processing fees are billable (i.e., greater than \$14.00); FOIAonline will generate the invoice.

NOTE: The Administrative Cost section in FOIAonline must be completed to document billable and unbillable costs in FOIAonline. All offices working on a request will enter their administrative costs in FOIAonline. The EPA is required to document actual fees charged to the public (billable) and the administrative costs (unbillable) incurred by the agency in processing FOIA requests.

- j. **Obtain Approval from an Authorized Official to Release or Withhold Records** – The Deputy Administrator, Assistant Administrators, Regional Administrators, the General Counsel, the Inspector General, Associate Administrators, and heads of HQs Staff Offices (or their appropriate designee) are delegated the authority to issue initial determinations to release or withhold records in response to FOIA requests.

NOTE: Initial determinations (both release and withholding determinations) may be redelegated only to persons occupying positions not lower than division director or equivalent.

- k. **Respond to FOIA Request** – The Action Office will provide the response letter, responsive records and invoice (when applicable) to the requester through FOIAonline. If an email address is provided, the requester will be notified via email that the responsive records are available in FOIAonline. Otherwise, the response package will be provided via postal mail.

The response letter must include a description of the information withheld either by category or volume, or by a list. In all cases, the response letter must also include the administrative appeal language.

- l. **Final actions** – The Action Office will ensure all supporting documentation is entered in FOIAonline (e.g., records of conversations or notes to the record). The record copy of the FOIA response will be maintained in FOIAonline, including all responsive records. Once published, these records become available for public searching and viewing.

Approved: _____



Michael H. Shapiro

**Deputy Assistant Administrator and Senior Information Official
Office of Water**

Date: _____

3/30/15